



March 13, 2001

Ms. Jan Clark  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2001-0987

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 144506.

The City of Houston (the "city") received a request for the following types of information:

- (a) List of names and addresses of all entities which have a written agreement for use of space within Compaq Center during the period January 1, 1995, to present, the duration of which may be at least one year;
- (b) A copy of any such written agreement; and
- (c) The amount of compensation paid for use of space in Compaq Center by each entity for calendar years 1995, 1996, 1997, 1998, 1999, and 2000.

Although the city claims no particular exception to the release of the information, the city nonetheless contends that the requested documents may contain information that implicates the proprietary interests of a third party. In accordance with section 552.305 of the Act, you notified the Arena Operating Company ("AOC") that its proprietary interests may be implicated by the public release of portions of the information at issue. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990)

(determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). Through its legal counsel, AOC responded to the city's notice with a letter to this office arguing that AOC does not possess any information that is responsive to the first category of requested information. With regard to the second and third categories, AOC claims that the responsive information is excepted from disclosure under section 552.110 of the Act. AOC has submitted to this office all of the agreements that it believes to be subject to the request that are in the city's possession. Those agreements are:

- 1) Reconstituted License Agreement, between AOC and Houston Rockets Professional Basketball Club, Ltd.;
- 2) Food and Beverage Services License Agreement, between AOC and ARA Leisure Services of Texas, Inc.; and
- 3) Ice Hockey License Agreement, between AOC and Southwest Ice Enterprises, L.C.

In addition, AOC has submitted a sample of information concerning compensation paid in the form of an invoice for use of the Compaq Center.<sup>1</sup> We have considered AOC's arguments and reviewed the submitted information.

Before we address AOC's arguments, we first recognize that AOC acted as an agent of the city when it executed the responsive contracts and when it received payments from private entities for use of the Compaq Center. These contracts and payments were made between AOC and private entities for use of the Compaq Center, which is an arena facility used for professional sporting events and entertainment events. The Compaq Center is owned by the city, which has the power to manage and control its own property. Under principles of agency, the city has the authority to delegate its power to another entity. In 1973, the city entered into the Sports Arena Agreement with AOC.<sup>2</sup> The information provided to this office shows that the city has transferred to AOC its responsibilities for the management and operation of the Compaq Center. Furthermore, we note that in a letter from the city to AOC, dated December 14, 2000 (a copy of which has been provided to this office) the city expressly acknowledges this agency relationship, stating that "the relationship between the City and the operator of the arena, Arena Operating Company ("AOC"), is one of principal

---

<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup>The Sports Arena Agreement was not submitted to this office.

and agent.” Therefore, the contracts in question are tantamount to contracts that were made by the city itself. In addition, the compensation paid to AOC by private entities for use of the Compaq Center is equivalent to payments made to the city.

Next, we recognize that these contracts and invoices are made expressly public by section 552.022(a)(3) of the Act, which provides:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

....

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov’t Code § 552.022(a)(3). Thus, contracts and invoices that relate to the receipt or expenditure of public or other funds are public information. This office has determined, however, that section 552.110 makes information confidential; therefore we will consider AOC’s arguments.

AOC claims that all of the requested contracts and invoices are protected from disclosure by section 552.110. Section 552.110 provides as follows:

(a) A trade secret obtained from a person and privileged or confidential by statute or judicial decision is excepted from the requirements of Section 552.021.

(b) Commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is excepted from the requirements of Section 552.021.

The exception protects the competitive interests of the person from whom the information was obtained. Therefore, it only protects the interests of third parties, not the interest of the governmental body or its agent that obtained the information. Because AOC was acting as the city’s agent when it executed the contracts in question and when it created the invoices showing the compensation owed, we conclude that section 552.110 does not apply to the responsive information. Because no exceptions have been shown to apply, all of the responsive information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

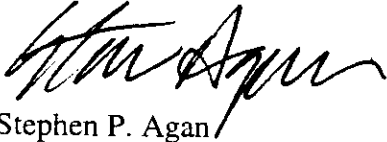
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen P. Agan".

Stephen P. Agan  
Assistant Attorney General  
Open Records Division

SPA/seg

Ref: ID# 144506

Encl. Submitted documents .

cc: Mr. John M. Renfrow  
Assistant County Attorney  
Harris County  
P.O. Box 920975  
Houston, Texas 77292-0975  
(w/o enclosures)

Mr. Denis Clive Braham  
Mr. Frederick J. Tuthill  
Winstead, Sechrest & Minick  
2400 Bank One Center  
910 Travis Street  
Houston, Texas 77002  
(w/o enclosures)